

## **Assembly Bill No. 1687**

### **CHAPTER 453**

An act amend Sections 5222, 5237, 5819, 6018, 6211, 6611, 7222, 7236, 8011, 8018, 8211, 8611, 8723, 9222, 9245, 12362, 12376, 12531, 12539, 12571, 12631, and 12662 of, and to add Sections 6325, 7122.3, 8325, 12302.1, and 12594 to, the Corporations Code, relating to corporations.

[Approved by Governor September 21, 1999. Filed  
with Secretary of State September 21, 1999.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1687, Committee on Banking and Finance. Nonprofit and consumer cooperative corporations.

Existing law provides for the formation and regulation of various types of nonprofit corporations, including nonprofit public benefit corporations, nonprofit mutual benefit corporations, and nonprofit religious corporations. Existing law also provides for the formation and regulation of certain corporations for specific purposes, including consumer cooperative corporations.

This bill would revise various provisions relating to these corporations. It would, under certain conditions:

(1) Provide that any reduction of the number of classes of directors does not remove any director prior to expiration of the director's term of office.

(2) Provide that the damages recoverable from a director for approving an illegal distribution of property shall be the fair market value of that property, and provide that the damages recoverable for any illegal distribution shall also include interest and reasonably incurred costs of appraisal or other valuation.

(3) Deny retroactive effectiveness to the merger of a California corporation into a foreign corporation.

(4) Permit the resignation of agents for service of process when the agents disclaim appointment and permit the resignation of officers and directors improperly appointed.

(5) Require the corporations to inform members, upon request, of actions taken by other members at meetings.

(6) Modify filing requirements otherwise applicable on the dissolution of a corporation if an election to dissolve is made by vote of all the members or by the board of a corporation that does not have members.

(7) Require the Secretary of State to refuse to file articles for a corporation containing references in its name to the industrial loan

business unless the corporation is authorized to be engaged in that business.

(8) Require an agreement of merger, if memberships in a corporation are to be canceled without consideration as a result of the merger, to contain a provision to that effect.

The bill would make other related changes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 5222 of the Corporations Code is amended to read:

5222. (a) Subject to subdivisions (b) and (f) of this section, any or all directors may be removed without cause if:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 5033).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 5034).

(3) In a corporation with no members, the removal is approved by a majority of the directors then in office.

(b) Except for a corporation having no members pursuant to Section 5310:

(1) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 5616, no director may be removed (unless the entire board is removed) when the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(2) When by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(3) When by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office.



(d) Except as provided in this section and Sections 5221 and 5223, a director may not be removed prior to the expiration of the director's term of office.

(e) Where a director removed under this section or Section 5221 or 5223 was chosen by designation pursuant to subdivision (d) of Section 5220, then:

(1) Where a different person may be designated pursuant to governing article or bylaw provision, the new designation shall be made.

(2) Where the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(f) When by the provisions of the articles or bylaws a person or persons are entitled to designate one or more directors, then:

(1) Unless otherwise provided in the articles or bylaws at the time of designation, any director so designated may be removed without cause by the designating person or persons.

(2) Any director so designated may only be removed under subdivision (a) with the written consent of the designating person or persons.

SEC. 2. Section 5237 of the Corporations Code is amended to read:

5237. (a) Subject to the provisions of Section 5231, directors of a corporation who approve any of the following corporate actions shall be jointly and severally liable to the corporation for:

(1) The making of any distribution.

(2) The distribution of assets after institution of dissolution proceedings of the corporation, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set by the court in a notice given to creditors under Chapters 15 (commencing with Section 6510), 16 (commencing with Section 6610) and 17 (commencing with Section 6710).

(3) The making of any loan or guaranty contrary to Section 5236.

(b) A director who is present at a meeting of the board, or any committee thereof, at which action specified in subdivision (a) is taken and who abstains from voting shall be considered to have approved the action.

(c) Suit may be brought in the name of the corporation to enforce the liability:

(1) Under paragraph (1) of subdivision (a) against any or all directors liable by the persons entitled to sue under subdivision (b) of Section 5420;

(2) Under paragraph (2) or (3) of subdivision (a) against any or all directors liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of the corporate action

who have not consented to the corporate action, whether or not they have reduced their claims to judgment;

(3) Under paragraph (1), (2) or (3) of subdivision (a), by the Attorney General.

(d) The damages recoverable from a director under this section shall be the amount of the illegal distribution, or if the illegal distribution consists of property, the fair market value of that property at the time of the illegal distribution, plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other valuation, if any, of that property, or the loss suffered by the corporation as a result of the illegal loan or guaranty.

(e) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(f) Directors liable under this section shall also be entitled to be subrogated to the rights of the corporation:

(1) With respect to paragraph (1) of subdivision (a), against the persons who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against the persons who received the distribution.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guaranty.

Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.

SEC. 4. Section 5819 of the Corporations Code is amended to read:

5819. (a) A corporation may restate in a single certificate the entire text of its articles as amended by filing an officers' certificate or, in circumstances where incorporators or the board may amend a corporation's articles pursuant to Sections 5811 and 5815, a certificate signed and verified by a majority of the incorporators or the board, as applicable, entitled "Restated Articles of Incorporation of (insert name of corporation)" that shall set forth the articles as amended to the date of filing of the certificate, except that the signatures and acknowledgments of the articles by the incorporators and any statements regarding the effect of any prior amendment upon memberships and any provisions of agreements of merger (other than amendments to the articles of the surviving corporation) and the names and addresses of the first directors and of the initial agent for service of process shall be omitted (except that the names and addresses of the initial agent for service of process and, if previously set forth in the articles, the initial directors, shall not be omitted prior to the time that the corporation has filed a statement under Section 6210). Those omissions are not alterations or amendments of the



articles. The certificate may also itself alter or amend the articles in any respect, in which case the certificate must comply with Section 5814 or 5815, as the case may be, and Section 5816.

(b) If the certificate does not itself alter or amend the articles in any respect, it shall be approved by the board or, prior to the issuance of any memberships and the naming and election of directors, by a majority of the incorporators, and shall be subject to the provisions of this chapter relating to an amendment of the articles not requiring approval of the members (Section 5034). If the certificate does itself alter or amend the articles, it shall be subject to the provisions of this chapter relating to the amendment or amendments so made.

(c) Restated articles of incorporation filed pursuant to this section shall supersede for all purposes the original articles and all amendments filed prior thereto.

SEC. 5. Section 6018 of the Corporations Code is amended to read:

6018. (a) Subject to the provisions of Section 6010, the merger of any number of corporations with any number of foreign corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a public benefit corporation or a religious corporation, the merger proceedings with respect to that corporation and any disappearing corporation shall conform to the provisions of this chapter governing the merger of corporations, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and Section 6012, the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a public benefit corporation or a religious corporation, the agreement and the officers' certificate of each constituent corporation shall be filed as provided in Section 6014 and thereupon, subject to subdivision (c) of Section 5008, the merger shall be effective as to each corporation; and each foreign disappearing corporation that is qualified for the transaction of intrastate business shall by virtue of the filing automatically surrender its right to transact intrastate business.

(d) If the surviving corporation is a foreign corporation, the merger shall become effective in accordance with the law of the jurisdiction in which it is organized, but shall be effective as to any disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state as required by this subdivision. There shall be filed as to the domestic disappearing corporation or corporations the documents described in any one of the following paragraphs:



(1) A copy of the agreement, certificate, or other document filed by the surviving foreign corporation in the state or place of its incorporation for the purpose of effecting the merger, which copy shall be certified by the public officer having official custody of the original.

(2) An executed counterpart of the agreement, certificate, or other document filed by the surviving corporation in the state or place of its incorporation for the purpose of effecting the merger.

(3) A copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation attached, which officers' certificates shall conform to the requirements of Section 6014.

(e) If the date of the filing in this state pursuant to subdivision (d) is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state. Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (d) surrender its right to transact intrastate business as of the date of filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation.

(f) A certificate of satisfaction of the Franchise Tax Board shall be filed when required by Section 6014 or when required by Section 23334 of the Revenue and Taxation Code.

SEC. 6. Section 6211 of the Corporations Code is amended to read:

6211. (a) An agent designated for service of process pursuant to Section 6210 may file a signed and acknowledged written statement of resignation as that agent. Thereupon the authority of the agent to act in that capacity shall cease and the Secretary of State forthwith shall give written notice of the filing of the statement of resignation by mail to the corporation addressed to its principal office.

(b) Under regulations adopted by the Secretary of State, the resignation of an agent may be effective if the agent disclaims having been properly appointed as the agent. Similarly, a person named as an officer or director may indicate that the person was never properly appointed as the officer or director.

SEC. 7. Section 6325 is added to the Corporations Code, to read:

6325. For a period of 60 days following the conclusion of an annual, regular, or special meeting of members, a corporation shall, upon written request from a member, forthwith inform the member of the result of any particular vote of members taken at the meeting, including the number of memberships voting for, the number of memberships voting against, and the number of memberships abstaining or withheld from voting. If the matter voted on was the

election of directors, the corporation shall report the number of memberships, or votes if voted cumulatively, cast for each nominee for director. If more than one class or series of memberships voted, the report shall state the appropriate numbers by class and series of memberships.

SEC. 8. Section 6611 of the Corporations Code is amended to read:

6611. (a) Whenever a corporation has elected to wind up and dissolve a certificate evidencing that election shall forthwith be filed and a copy thereof filed with the Attorney General.

(b) The certificate shall be an officers' certificate or shall be signed and verified by at least a majority of the directors then in office or by one or more members authorized to do so by approval of a majority of all members (Section 5033) and shall set forth:

(1) That the corporation has elected to wind up and dissolve.

(2) If the election was made by the vote of members alone, the number of votes for the election and that the election was made by a majority of all members (Section 5033).

(3) If the election was made by the board and members pursuant to paragraph (2) of subdivision (a) of Section 6610, the certificate shall state that it was made by the board and the members in accordance with Section 5034.

(4) If the certificate is executed by a member or members, that the subscribing person or persons were authorized to execute the certificate by a majority of all members (Section 5033).

(5) If the election was made by the board pursuant to subdivision (b) of Section 6610, the circumstances showing the corporation to be within one of the categories described in that subdivision.

(c) If an election to dissolve made pursuant to subdivision (a) of Section 6610 is made by the vote of all the members of a corporation with members or by all members of the board of a corporation without members and a statement to that effect is added to the certificate of dissolution pursuant to Section 6611, the separate filing of the certificate of election pursuant to this section is not required.

SEC. 10. Section 7122.3 is added to the Corporations Code, to read:

7122.3. The Secretary of State shall not file articles for a corporation the name of which would fall within the prohibitions of Section 18104 of the Financial Code. This section shall not apply to articles filed for a corporation organized in accordance with Section 18100 of the Financial Code.

SEC. 11. Section 7222 of the Corporations Code is amended to read:

7222. (a) Subject to subdivisions (b) and (f) of this section, any or all directors may be removed without cause if:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 5033).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 5034).

(3) In a corporation with no members, the removal is approved by a majority of the directors then in office.

(b) Except for a corporation having no members, pursuant to Section 7310:

(1) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 7615, no director may be removed (unless the entire board is removed) when the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(2) When by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(3) When by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office.

(d) Except as provided in this section and Sections 7221 and 7223, a director may not be removed prior to the expiration of the director's term of office.

(e) Where a director removed under this section or Section 7221 or 7223 was chosen by designation pursuant to subdivision (d) of Section 7220, then:

(1) Where a different person may be designated pursuant to the governing article or bylaw provision, the new designation shall be made.

(2) Where the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(f) When by the provisions of the articles or bylaws a person or persons are entitled to designate one or more directors, then:

(1) Unless otherwise provided in the articles or bylaws at the time of designation, any director so designated may be removed without cause by the designating person or persons.





(2) Any director so designated may only be removed under subdivision (a) with the written consent of the designating person or persons.

SEC. 12. Section 7236 of the Corporations Code is amended to read:

7236. (a) Subject to the provisions of Section 7231, directors of a corporation who approve any of the following corporate actions shall be jointly and severally liable to the corporation for the benefit of all of the creditors entitled to institute an action under paragraph (1) or (2) of subdivision (c) or to the corporation in an action by the head organization or members under paragraph (1) or (3) of subdivision (c):

(1) The making of any distribution contrary to Chapter 4 (commencing with Section 7410).

(2) The distribution of assets after institution of dissolution proceedings of the corporation, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set by the court in a notice given to creditors under Chapter 15 (commencing with Section 8510), 16 (commencing with Section 8610), and 17 (commencing with Section 8710).

(3) The making of any loan or guaranty contrary to Section 7235.

(b) A director who is present at a meeting of the board, or any committee thereof, at which action specified in subdivision (a) is taken and who abstains from voting shall be considered to have approved the action.

(c) Suit may be brought in the name of the corporation to enforce the liability:

(1) Under paragraph (1) of subdivision (a) against any or all directors liable by the persons entitled to sue under subdivision (c) of Section 7420.

(2) Under paragraph (2) or (3) of subdivision (a) against any or all directors liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of the corporate action who have not consented to the corporate action, whether or not they have reduced their claims to judgment.

(3) Under paragraph (3) of subdivision (a) against any or all directors liable by any one or more members at the time of any corporate action specified in paragraph (3) of subdivision (a) who have not consented to the corporate action, without regard to the provisions of Section 7710.

(d) The damages recoverable from a director under this section shall be the amount of the illegal distribution, or if the illegal distribution consists of property, the fair market value of that property at the time of the illegal distribution, plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other



valuation, if any, of that property, or the loss suffered by the corporation as a result of the illegal loan or guaranty, but not exceeding, in the case of an action for the benefit of creditors, the liabilities of the corporation owed to nonconsenting creditors at the time of the violation.

(e) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(f) Directors liable under this section shall also be entitled to be subrogated to the rights of the corporation:

(1) With respect to paragraph (1) of subdivision (a), against the persons who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against the persons who received the distribution.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guaranty.

Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.

SEC. 14. Section 8011 of the Corporations Code is amended to read:

8011. The board of each corporation that desires to merge shall approve an agreement of merger. The constituent corporations shall be parties to the agreement of merger and other persons may be parties to the agreement of merger. The agreement shall state all of the following:

(a) The terms and conditions of the merger.

(b) The amendments, subject to Sections 7810 and 7816, to the articles of the surviving corporation to be effected by the merger, if any; if any amendment changes the name of the surviving corporation, the new name may be the same as or similar to the name of a disappearing corporation, subject to subdivision (c) of Section 7122.

(c) The amendments to the bylaws of the surviving corporation to be effected by the merger, if any.

(d) The name and place of incorporation of each constituent corporation and which of the constituent corporations is the surviving corporation.

(e) The manner, if any, of converting memberships or securities of the constituent corporations into memberships or securities of the surviving corporation and, if any memberships or securities of any of the constituent corporations are not to be converted solely into memberships or securities of the surviving corporation, the cash, property, rights or securities of any corporation that the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, property, rights or securities



of any corporation may be in addition to or in lieu of memberships or securities of the surviving corporation, or that the memberships are to be canceled without consideration.

(f) Other details or provisions as are desired, if any, including, without limitation, if not prohibited by this chapter, a provision for the payment of cash in lieu of fractional memberships or for any other arrangement with respect thereto.

SEC. 15. Section 8018 of the Corporations Code is amended to read:

8018. (a) Subject to the provisions of Section 8010, the merger of any number of corporations with any number of foreign corporations, foreign business corporations or domestic corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a mutual benefit corporation, the merger proceedings with respect to that corporation and any domestic disappearing corporation shall conform to the provisions of this chapter and other applicable laws of this state, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and Section 8012 the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a mutual benefit corporation, the agreement and the officers' certificate of each constituent corporation shall be filed as provided in Section 8014 and thereupon, subject to subdivision (c) of Section 5008, the merger shall be effective as to each corporation; and each foreign disappearing corporation that is qualified for the transaction of intrastate business shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

(d) If the surviving corporation is a foreign corporation, or foreign business corporation, the merger shall become effective in accordance with the law of the jurisdiction in which it is organized, but shall be effective as to any disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state as required by this subdivision. There shall be filed as to the domestic disappearing corporation or corporations the documents described in any one of the following paragraphs:

(1) A copy of the agreement, certificate, or other document filed by the surviving foreign corporation in the state or place of its incorporation for the purpose of effecting the merger, which copy shall be certified by the public officer having official custody of the original.



(2) An executed counterpart of the agreement, certificate, or other document filed by the surviving corporation in the state or place of its incorporation for the purpose of effecting the merger.

(3) A copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation attached, which officers' certificates shall conform to the requirements of Section 8014.

(e) If the date of the filing in this state pursuant to subdivision (d) is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state. Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (d) surrender its right to transact intrastate business as of the date of filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation.

(f) A certificate of satisfaction of the Franchise Tax Board shall be filed when required by Section 8014 or when required by Section 23334 of the Revenue and Taxation Code.

SEC. 16. Section 8211 of the Corporations Code is amended to read:

8211. (a) An agent designated for service of process pursuant to Section 8210 may file a signed and acknowledged written statement of resignation as that agent. Thereupon the authority of the agent to act in that capacity shall cease and the Secretary of State forthwith shall give written notice of the filing of the statement of resignation by mail to the corporation addressed to its principal office.

(b) Under regulations adopted by the Secretary of State, the resignation of an agent may be effective if the agent disclaims having been properly appointed as the agent. Similarly, a person named as an officer or director may indicate that the person was never properly appointed as the officer or director.

SEC. 17. Section 8325 is added to the Corporations Code, to read:

8325. For a period of 60 days following the conclusion of an annual, regular, or special meeting of members, a corporation shall, upon written request from a member, forthwith inform the member of the result of any particular vote of members taken at the meeting, including the number of memberships voting for, the number of memberships voting against, and the number of memberships abstaining or withheld from voting. If the matter voted on was the election of directors, the corporation shall report the number of memberships, or votes if voted cumulatively, cast for each nominee for director. If more than one class or series of memberships voted, the report shall state the appropriate numbers by class and series of memberships.



SEC. 18. Section 8611 of the Corporations Code is amended to read:

8611. (a) Whenever a corporation has elected to wind up and dissolve a certificate evidencing that election shall forthwith be filed. A copy of that certificate shall be filed with the Attorney General if the corporation holds assets in charitable trust or has a charitable dissolution clause.

(b) The certificate shall be an officers' certificate or shall be signed and verified by at least a majority of the directors then in office or by one or more members authorized to do so by approval of a majority of all members (Section 5033) and shall set forth:

(1) That the corporation has elected to wind up and dissolve.

(2) If the election was made by the vote of members alone, the number of votes for the election and that the election was made by a majority of all members (Section 5033).

(3) If the election was made by the board and the members pursuant to paragraph (2) of subdivision (a) of Section 8610, the certificate shall state that it was made by the board and the members in accordance with Section 5034.

(4) If the certificate is executed by a member or members, that the subscribing person or persons were authorized to execute the certificate a majority of all members (Section 5033).

(5) If the election was made by the board pursuant to subdivision (b) of Section 8610, the circumstances showing the corporation to be within one of the categories described in that subdivision.

(c) If an election to dissolve made pursuant to subdivision (a) of Section 8610 is made by the vote of all the members of a corporation with members or by all members of the board of a corporation without members and a statement to that effect is added to the certificate of dissolution pursuant to Section 8611, the separate filing of the certificate of election pursuant to this section is not required.

SEC. 19. Section 8723 of the Corporations Code is amended to read:

8723. (a) (1) Causes of action against a dissolved corporation, whether arising before or after the dissolution of the corporation, may be enforced against any of the following:

(A) Against the dissolved corporation, to the extent of its undistributed assets, including, without limitation, any insurance assets held by the corporation that may be available to satisfy claims.

(B) If any of the assets of the dissolved corporation have been distributed to other persons, against those persons to the extent of their pro rata share of the claim or to the extent of the corporate assets distributed to them upon dissolution of the corporation, whichever is less.

The total liability of a person under this section may not exceed the total amount of assets of the dissolved corporation distributed to that person upon dissolution of the corporation.

(2) Except as set forth in subdivision (c), all causes of action against a person to whom assets were distributed arising under this section are extinguished unless the claimant commences a proceeding to enforce the cause of action against that person prior to the earlier of the following:

(A) The expiration of the statute of limitations applicable to the cause of action.

(B) Four years after the effective date of the dissolution of the corporation.

(3) As a matter of procedure only, and not for purposes of determining liability, persons to whom assets of a dissolved corporation are distributed may be sued in the name of the corporation upon any cause of action against the corporation. This section does not affect the rights of the corporation or its creditors under Section 2009, or the rights, if any, of creditors under the Uniform Fraudulent Transfer Act, which may arise against persons to whom those assets are distributed.

(4) This subdivision applies to corporations dissolved on or after January 1, 2000. Corporations dissolved prior to that date are subject to the law in effect prior to that date.

(b) Summons or other process against the corporation may be served by delivering a copy thereof to an officer, director or person having charge of its assets or, if none of these persons can be found, to any agent upon whom process might be served at the time of dissolution. If none of those persons can be found with due diligence and it is so shown by affidavit to the satisfaction of the court, then the court may make an order that summons or other process be served upon the dissolved corporation by personally delivering a copy thereof, together with a copy of the order, to the Secretary of State or an assistant or deputy secretary of state, with an additional copy of the summons or other process and order being delivered to the Attorney General in the case of a corporation that at the commencement of the dissolution proceedings held assets in charitable trust. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State, or in the case of a corporation that at the commencement of the dissolution proceedings held assets in charitable trust, upon the 10th day after the later of delivery of process to the Secretary of State or Attorney General.

(c) The corporation shall survive and continue to exist indefinitely for the purpose of being sued in any quiet title action. Any judgment rendered in that action shall bind each of its members or other persons having any equity or other interest in the corporation, to the extent of their interest therein, and that action shall have the same force and effect as an action brought under the provisions of Sections 410.50 and 410.60 of the Code of Civil Procedure. Service of summons or other process in that action may be made as provided in Chapter



4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure or as provided in subdivision (b).

(d) Upon receipt of that process and the fee therefor, the Secretary of State forthwith shall give notice to the corporation as provided in Section 1702.

SEC. 20. Section 9222 of the Corporations Code is amended to read:

9222. (a) Except as provided in the articles or bylaws and subject to subdivision (b) of this section, any or all directors may be removed without cause if the removal is approved by the members (Section 5034).

(b) Except for a corporation having no members pursuant to Section 9310:

(1) When by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(2) When by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office.

SEC. 21. Section 9245 of the Corporations Code is amended to read:

9245. (a) Subject to the provisions of Section 9241, directors of a corporation who approve any of the following corporate actions shall be jointly and severally liable to the corporation for:

(1) The making of any distribution.

(2) The distribution of assets after institution of dissolution proceedings of the corporation, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set by the court in a notice given to creditors under Section 9680 and those sections made applicable to this part by Section 9680.

(3) The making of any loan or guaranty contrary to Section 9241.

(b) Suit may be brought in the name of the corporation to enforce the liability:

(1) Under paragraph (1) of subdivision (a) against any or all directors liable by the persons entitled to sue under subdivision (b) of Section 9610;

(2) Under paragraph (2) or (3) of subdivision (a) against any or all directors liable by any one or more creditors of the corporation





whose debts or claims arose prior to the time of the corporate action who have not consented to the corporate action, whether or not they have reduced their claims to judgment.

(c) The damages recoverable from a director under this section shall be the amount of the illegal distribution, or if the illegal distribution consists of property, the fair market value of that property at the time of the illegal distribution, plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other valuation, if any, of that property, or the loss suffered by the corporation as a result of the illegal loan or guaranty.

(d) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(e) Directors liable under this section shall also be entitled to be subrogated to the rights of the corporation as follows:

(1) With respect to paragraph (1) of subdivision (a), against members who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against the members who received the distribution.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guaranty.

Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.

SEC. 23. Section 12302.1 is added to the Corporations Code, to read:

12302.1. The Secretary of State shall not file articles for a corporation the name of which would fall within the prohibitions of Section 18104 of the Financial Code. This section shall not apply to articles filed for a corporation organized in accordance with Section 18100 of the Financial Code.

SEC. 24. Section 12362 of the Corporations Code is amended to read:

12362. (a) Subject to subdivisions (b), (c) and (g), any or all directors may be removed without cause if one of the following applies:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 12223).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 12224).

(b) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 12485, no director may be removed (unless the entire board is removed) when the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if



voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected; and

(c) When by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(d) Any reduction of the authorized number of directors or any amendment reducing the number of class of directors does not remove any director prior to the expiration of the director's term of office.

(e) Except as provided in this section and Sections 12361 and 12363, a director may not be removed prior to the expiration of the director's term of office.

(f) Where a director removed under this section or Section 12361 or 12363 was chosen by designation pursuant to subdivision (d) of Section 12360, then:

(1) Where a different person may be designated pursuant to the governing article or bylaw provision, the new designation shall be made; or

(2) Where the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(g) When by the provisions of the articles or bylaws a person or persons are entitled to designate one or more directors, the provisions shall also provide for removal of those directors and any director so designated may only be removed as so provided.

SEC. 25. Section 12376 of the Corporations Code is amended to read:

12376. (a) Subject to the provisions of Section 12371, directors of a corporation who approve any of the following corporate actions are jointly and severally liable to the corporation for the benefit of all of the creditors entitled to institute an action under paragraph (1) or (2) of subdivision (c) or to the corporation in an action by members under paragraph (3) of subdivision (c):

(1) The making of any distribution or purchase or redemption of memberships contrary to Chapter 4 (commencing with Section 12450).

(2) The distribution of assets after institution of dissolution proceedings of the corporation, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set by the court in a notice given to creditors under Chapters 15 (commencing with Section 12620), 16 (commencing with Section 12630), and 17 (commencing with Section 12650).

(3) The making of any loan or guarantee contrary to Section 12375.

(b) A director who is present at a meeting of the board, or any committee thereof, at which action specified in subdivision (a) is taken and who abstains from voting shall be considered to have approved the action.

(c) Suit may be brought in the name of the corporation to enforce the liability:

(1) Under paragraph (1) of subdivision (a) against any or all directors liable by the persons entitled to sue under subdivision (c) of Section 12455.

(2) Under paragraph (2) or (3) of subdivision (a) against any or all directors liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of the corporate action who have not consented to the corporate action, whether or not they have reduced their claims to judgment.

(3) Under paragraph (3) of subdivision (a) against any or all directors liable by any one or more members at the time of any corporate action specified in paragraph (3) of subdivision (a) who have not consented to the corporate action, without regard to the provisions of Section 12490.

(d) The damages recoverable from a director under this section shall be the amount of the illegal distribution, or if the illegal distribution consists of property, the fair market value of that property at the time of the illegal distribution, plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other valuation, if any, of that property, or the loss suffered by the corporation as a result of the illegal loan or guarantee, but not exceeding, in the case of an action for the benefit of creditors, the liabilities of the corporation owed to nonconsenting creditors at the time of the violation.

(e) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(f) Directors liable under this section shall also be entitled to be subrogated to the rights of the corporation:

(1) With respect to paragraph (1) of subdivision (a), against the persons who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against the persons who received the distribution.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guarantee.

Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.



SEC. 27. Section 12531 of the Corporations Code is amended to read:

12531. The board of each corporation that desires to merge shall approve an agreement of merger. The constituent corporations shall be parties to the agreement of merger and other persons may be parties to the agreement of merger. The agreement shall state all of the following:

(a) The terms and conditions of the merger.

(b) The amendments, subject to Sections 12500 and 12505 to the articles of the surviving corporation to be effected by the merger, if any; if any amendment changes the name of the surviving corporation, the new name may be the same as or similar to the name of a disappearing corporation, subject to subdivision (c) of Section 12302.

(c) The amendments to the bylaws of the surviving corporation to be effected by the merger, if any.

(d) The name and place of incorporation of each constituent corporation and which of the constituent corporations is the surviving corporation.

(e) The manner, if any, of converting memberships or securities of the constituent corporations into memberships or securities of the surviving corporation and, if any memberships or securities of any of the constituent corporations are not to be converted solely into memberships or securities of the surviving corporation, the cash, property, rights or securities of any corporation that the holders of those memberships or securities are to receive in exchange for the memberships or securities, which cash, property, rights or securities of any corporation may be in addition to or in lieu of memberships or securities of the surviving corporation or that the memberships are to be canceled without consideration.

(f) Other details or provisions as are desired, if any, including, without limitation, if not prohibited by this chapter, a provision for the payment of cash in lieu of fractional memberships or for any other arrangement with respect thereto.

SEC. 28. Section 12539 of the Corporations Code is amended to read:

12539. (a) Subject to the provisions of Section 12530, the merger of any number of corporations with any number of foreign corporations, foreign business corporations, or domestic corporations may be effected if the foreign corporations are authorized by the laws under which they are formed to effect the merger. The surviving corporation may be any one of the constituent corporations and shall continue to exist under the laws of the state or place of its incorporation.

(b) If the surviving corporation is a cooperative corporation, the merger proceedings with respect to that corporation and any domestic disappearing corporation shall conform to the provisions of



this chapter and other applicable laws of this state, but if the surviving corporation is a foreign corporation, then, subject to the requirements of subdivision (d) and Section 12533, the merger proceedings may be in accordance with the laws of the state or place of incorporation of the surviving corporation.

(c) If the surviving corporation is a cooperative corporation, the agreement and the officers' certificate of each constituent corporation shall be filed as provided in Section 12535 and thereupon, subject to subdivision (c) of Section 12214, the merger shall be effective as to each corporation; and each foreign disappearing corporation that is qualified for the transaction of intrastate business shall, by virtue of the filing, automatically surrender its right to transact intrastate business.

(d) If the surviving corporation is a foreign corporation, the merger shall become effective in accordance with the law of the jurisdiction in which it is organized, but shall be effective as to any disappearing corporation as of the time of effectiveness in the foreign jurisdiction upon the filing in this state as required by this subdivision. There shall be filed as to the domestic disappearing corporation or corporations the documents described in any one of the following paragraphs:

(1) A copy of the agreement, certificate, or other document filed by the surviving corporation in the state or place of its incorporation for the purpose of effecting the merger, which copy shall be certified by the public officer having official custody of the original.

(2) An executed counterpart of the agreement, certificate, or other document filed by the surviving corporation in the state or place of its incorporation for the purpose of effecting the merger.

(3) A copy of the agreement of merger with an officers' certificate of the surviving foreign corporation and of each constituent domestic corporation attached.

(e) If the date of the filing in this state pursuant to subdivision (d) is more than six months after the time of the effectiveness in the foreign jurisdiction, or if the powers of the domestic corporation are suspended at the time of effectiveness in the foreign jurisdiction, the merger shall be effective as to the domestic disappearing corporation or corporations as of the date of filing in this state. Each foreign disappearing corporation that is qualified for the transaction of intrastate business shall automatically by the filing pursuant to subdivision (d) surrender its right to transact intrastate business as of the date of the filing in this state regardless of the time of effectiveness as to a domestic disappearing corporation.

(f) A certificate of satisfaction of the Franchise Tax Board shall be filed when required by Section 23334 of the Revenue and Taxation Code.

SEC. 29. Section 12571 of the Corporations Code is amended to read:

12571. (a) An agent designated for service of process pursuant to Section 12570 may file a signed and acknowledged written statement of resignation as that agent. Thereupon the authority of the agent to act in that capacity shall cease and the Secretary of State forthwith shall give written notice of the filing of the statement of resignation by mail to the corporation addressed to its principal office.

(b) Under regulations adopted by the Secretary of State, the resignation of an agent may be effective if the agent disclaims having been properly appointed as the agent. Similarly, a person named as an officer or director may indicate that the person was never properly appointed as the officer or director.

SEC. 30. Section 12594 is added to the Corporations Code, to read:

12594. For a period of 60 days following the conclusion of an annual, regular, or special meeting of members, a corporation shall, upon written request from a member, forthwith inform the member of the result of any particular vote of members taken at the meeting, including the number of memberships voting for, the number of memberships voting against, and the number of memberships abstaining or withheld from voting. If the matter voted on was the election of directors, the corporation shall report the number of memberships, or votes if voted cumulatively, cast for each nominee for director. If more than one class or series of memberships voted, the report shall state the appropriate numbers by class and series of memberships.

SEC. 31. Section 12631 of the Corporations Code is amended to read:

12631. (a) Whenever a corporation has elected to wind up and dissolve a certificate evidencing that election shall forthwith be filed.

(b) The certificate shall be an officers' certificate or shall be signed and verified by at least a majority of the directors then in office or by one or more members authorized to do so by approval of a majority of all members (Section 12223) and shall set forth:

(1) That the corporation has elected to wind up and dissolve.

(2) If the election was made by the vote of members alone, the number of votes for the election and that the election was made by persons holding at least a majority of the voting power.

(3) If the certificate is executed by a member or members, that the subscribing person or persons were authorized to execute the certificate by persons representing at least a majority of the voting power.

(4) If the election was made by the board pursuant to subdivision (b) of Section 12630, the certificate shall also set forth the circumstances showing the corporation to be within one of the categories described in that subdivision.

(c) If an election to dissolve made pursuant to subdivision (a) of Section 12630 is made by the vote of all the members of a corporation with members or by all members of the board of a corporation

without members and a statement to that effect is added to the certificate of dissolution pursuant to Section 12631, the separate filing of the certificate of election pursuant to this section is not required.

SEC. 32. Section 12662 of the Corporations Code is amended to read:

12662. (a) (1) Causes of action against a dissolved corporation, whether arising before or after the dissolution of the corporation, may be enforced against any of the following:

(A) Against the dissolved corporation, to the extent of its undistributed assets; including, without limitation, any insurance assets held by the corporation that may be available to satisfy claims.

(B) If any of the assets of the dissolved corporation have been distributed to other persons, against those persons to the extent of their pro rata share of the claim or to the extent of the corporate assets distributed to them upon dissolution of the corporation, whichever is less.

The total liability of a person under this section may not exceed the total amount of assets of the dissolved corporation distributed to that person upon dissolution of the corporation.

(2) Except as set forth in subdivision (c), all causes of action against a person to whom assets were distributed arising under this section are extinguished unless the claimant commences a proceeding to enforce the cause of action against that person prior to the earlier of the following:

(A) The expiration of the statute of limitations applicable to the cause of action.

(B) Four years after the effective date of the dissolution of the corporation.

(3) As a matter of procedure only, and not for purposes of determining liability, persons to whom assets of a dissolved corporation are distributed may be sued in the name of the corporation upon any cause of action against the corporation. This section does not affect the rights of the corporation or its creditors under Section 2009, or the rights, if any, of creditors under the Uniform Fraudulent Transfer Act, which may arise against persons to whom such assets are distributed.

This subdivision applies to corporations dissolved on or after January 1, 2000. Corporations dissolved prior to that date are subject to the law in effect prior to that date.

(b) Summons or other process against a dissolved corporation may be served by delivering a copy thereof to an officer, director or person having charge of its assets or, if that person cannot be found, to any agent upon whom process might be served at the time of dissolution. If none of these persons can be found with due diligence and it is so shown by affidavit to the satisfaction of the court, then the court may make an order that summons or other process be served upon the dissolved corporation by personally delivering a copy



thereof, together with a copy of the order, to the Secretary of State or an assistant or deputy secretary of state.

(c) Every dissolved corporation shall survive and continue to exist indefinitely for the purpose of being sued in any quiet title action. Any judgment rendered in any quiet title action shall bind each and all of its members or other persons having any equity or other interest in that corporation, to the extent of their interest therein, and that action shall have the same force and effect as an action brought under the provisions of Sections 410.50 and 410.60 of the Code of Civil Procedure. Service of summons or other process in any quiet title action may be made as provided in Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure or as provided in subdivision (b).

(d) Upon receipt of that process and the fee therefor, the Secretary of State forthwith shall give notice to the corporation as provided in Section 1702.

